

DEC - 1 1994

BEFORE THE
Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WASHINGTON, D.C. 20554

In the Matter of)

CC Docket No. 94-1

Price Cap Performance Review)
for Local Exchange Carriers)

**Ex Parte Statement on Ratepayer Funded
Contributions to the Telecommunications "Infrastructure"**

The Consumer Federation of America (CFA) and the International Communications Association (ICA)¹ have noted Chairman Hundt's statement in his recent speech to the United States Telephone Association that a FCC task force is studying the job of connecting classrooms to the information highway. We have also reviewed the reply comments in this proceeding by educational and library associations which propose that the consumer productivity dividend (CPD) in the local exchange carriers (LEC) price cap plan be redirected to a program designed to benefit education and libraries. Their written filings suggest that the 0.5 % CPD not be included in the price cap calculation, but instead be allocated to a special account against which the LECs would charge investments made in library and school infrastructure in their telephone service territories. If at the end of the rate period the full 0.5 % dividend amount had not been absorbed through infrastructure investments, the parties suggest that it be made available for use the following year.

The CPD is 0.5% of the current price cap index on the LECs' interstate revenues. Over the 4-year period contemplated for the revised LEC price cap plan, their proposal would result in a transfer of well over a billion dollars in money that would otherwise be available to reduce telephone subscriber rates. Since the proposal would not require LECs to spend this money, rather it allow them to retain the funds in a special account, any money not spent directly on schools or libraries would represent cost free capital and added cash flow to the LECs totally funded by captive telephone ratepayers. In the last two years, the U.S. Congress has appropriated significant amounts of American tax money to fund grants

¹ CFA is a non-profit association of 240 pro-consumer groups, with a combined membership of 50 million, that was founded in 1968 to advance the consumer interest through advocacy and education. ICA is the largest and most broadly-based organization of telecommunications end users in the United States. ICA is a not-for-profit league of over 600 corporate, educational, and governmental users of telecommunications equipment, facilities, and services. ICA members do not include firms predominantly engaged in the production, sale, or rental of telecommunications services and its members spend over \$21 billion per year on telecommunications services and equipment.

and demonstration projects under the telecommunications infrastructure program administered by the National Telecommunications and Information Administration (NTIA).² Therefore, the money transferred from captive telephone ratepayers under the proposal would be dramatically greater than the amount Congress has so far seen fit to allocate for these social telecommunications infrastructure objectives through its authorization and appropriation mechanisms using monies from broad based U.S. taxes. Commission approval of a transfer payment that was even a fraction of this size would raise very significant legal and policy issues. These issues must be addressed in a separate proceeding specifically designed to elicit the broadest possible comments from all sectors of the public.

Accordingly, the current CPD should not be redirected into this type of fund in the current proceeding. The undersigned recognize that carefully targeted infrastructure assistance to eligible entities may have external public benefits. Indeed, ICA comments in this proceeding noted:

"Many ICA members are educational institutions that are deeply involved in the development of telecommunications and information programs, including, but not limited to, operational 'distance learning' programs. The problems encountered in these efforts included two important ones that could be carefully targeted. First, many public buildings, like school houses, lack even the most rudimentary building wiring. Existing telephone wiring may be confined to administrator's offices. Second, the teachers and pupils at a school may lack the training needed to utilize more advanced information technologies. The ability of telephone companies, cable television and other network providers to bring advanced facilities to the school-house door has relatively little value if the information cannot be transmitted within the building or the people who occupy it on a daily basis lack the full understanding of how to use the technologies effectively."³

In Congressional testimony, CFA has called upon Congress to intervene and make certain that the promise of information rich classrooms and electronic town halls are realized so Americans do not simply end up with a super highway that looks like an electronic arcade. At the same time, CFA warned that permitting unilateral decisions by the monopoly telephone company or monopoly cable company will deny ratepayers the opportunity to hook up schools, libraries, clinics, etc, at the lowest possible cost. Competitive bidding and other fundamental rules of good governance should be required to make certain applications

² \$24-million was appropriated by Congress and granted by NTIA in FY 1994; Congress has appropriated \$64-million for NTIA grants for FY 1995.

³ ICA Comments, Attachment A at 3.

desired by a community are deployed in a responsible manner.⁴

Nevertheless, the notion of dedicated ratepayer support for public infrastructure raises many issues. The undersigned representatives of captive ratepayers of LEC services believe that the Commission should specifically seek comments on the following issues:

- 1) Commission authority to create the transfer price mechanism should be clearly established. The Commission's mandate is to make available, as far as possible to all the people of the United States a rapid, efficient communication service with adequate facilities at reasonable charges. The mandate may or may not extend to favoring some groups over others. A particular discrimination or preference in favor of some groups is no more reasonable if it occurs under the Commission's imprimatur than if effected by a common carrier exercising market power. It is quite possible that the proposal of the education and library interests is nothing more than an illegal tax on captive telephone ratepayers.
- 2) Regulatory treatment of any such transfers should be exogenous to the price cap. Any such transfer mechanism should not be incorporated into the price cap index. The price cap plan is a tariff review mechanism, not a catch-all for any conceivable government policy. Any funding of infrastructure for designated entities like certain public institutions should be treated as an exogenous adjustment to the exchange carrier's price cap recovery. The exogenous adjustment should not be allowed until after the expenditure has been completed.
- 3) Eligibility for funding should be defined in a non-discriminatory manner. The set of potential recipients of money under any transfer payment program should be carefully defined in advance. In addition to the types of public institutions that have been discussed to date, charitable organizations qualified under section 501(c)(3) of the Internal Revenue Code could be considered for eligibility. Some private institutions, such as private schools, medical laboratories, and hospitals could be considered for inclusion because part of the ratepayer funding for the transfer payments would arise from these institutions.
- 4) Maximum competition should be ensured. Any remedial infrastructure funding should be confined to projects for which full

⁴ National Communications Infrastructure (Part 2), Hearings before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce Committee of the House of Representatives, 103rd Congress, 2nd Session, Serial No. 103-99 at 611-625.

competitive bidding is possible. Competition will ensure the most efficient allocation of resources. Simply because an LEC regulatory plan is the vehicle for funding, the LEC itself should not be the sole or even primary supplier, owner or beneficiary of the products created by the expenditure. Many providers other than carriers are capable of providing support for advanced information and telecommunications services and these providers should have equal access to any ratepayer supplied funds. Building wiring services are widely available today in most areas from electrical and other contractors, computer vendors and equipment suppliers. Similarly, training in using computers, advanced communications devices, software and other information technologies is widely available in most parts of the country from entities ranging from small businesses to professional development firms, as well as colleges and universities. Any authorized government funding of these matters should ensure that American taxpayers get the benefit of the lowest price providers. The only possible market failure that might be perceived with respect to telecommunications infrastructure barriers in public institutions like schools and libraries arises from a possible lack of funds for wiring upgrades, terminals training services etc., rather than from any lack of competition in the supply of these products.

5) Social policy infrastructure investments should not be funded in this manner. Such infrastructure funding should not include LEC network resources. LECs do not need more money to spend.⁵ The infrastructure technologies being deployed by LECs today are largely being financed within the LECs' existing cash flow from captive telephone ratepayer monies with little reliance on capital markets. There is no evidence that telecommunications/information markets in the United States are having trouble raising capital from private sources. To the contrary, capital is widely available to support many start-up, developing and mature high technology companies providing communications services, software and equipment. The Commission lacks the ability to identify network upgrades that are undertaken for strategic purposes benefiting the LEC. If the extension of video capability to a public school just happened to be routed through network facilities serving an area with potential demand for a LEC's video dial tone offering, for example, what part of the network

⁵ The Commission's own data clearly indicates, as does CFA's most recent ex parte filing in this proceeding, that BOC infrastructure investments are below industry historical levels. This has happened at the same time that the flaws in the Commission's original price cap plan have allowed the LECs to have profited disproportionately. It appears that these BOC proceeds have been used for non-regulated ventures.

resources should be allocated to the commercial endeavor?

6) Access to and use of the products and services for social policy purposes, such as those articulated by the school and library interests, should remain in the public domain. The utilization of as well as any knowledge gained through funded projects should be in the public domain and available for review by any public or private sector entity. This provision is critical to the widespread dissemination of information gained through what would be involuntary contributions from captive telephone ratepayers.

WHEREFORE, the undersigned request the Commission to duly consider the six points discussed above and to reject the proposals to have the charges for captive telephone ratepayers illegally increased.

Respectfully Submitted,

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November 30, 1994